

FILED BY CLERK

APR 19 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0375-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
DONNELL THOMAS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR-20022184, CR-20022200, and CR-20023124

Honorable Kenneth Lee, Judge

REVIEW GRANTED; RELIEF DENIED

Donnell Thomas

Tucson
In Propria Persona

V Á S Q U E Z, Judge.

¶1 In May 2003, petitioner Donnell Thomas was sentenced simultaneously in three Pima County causes—Nos. CR-20022184, CR-20022200, CR-20023124—in which collectively he had been convicted of one count of robbery, one count of aggravated assault, and two counts of armed robbery. The longest of the concurrent sentences

imposed for those crimes was a twenty-one-year term for armed robbery, a dangerous and repetitive offense. His sentences in each case were enhanced on the basis of his previous conviction for murder in Pima County cause number A-17852.

¶2 Since May 2003, with the various appeals and post-conviction proceedings he has filed in this court arising from those three cases, Thomas has generated no fewer than twelve separate cause numbers, all captioned *State v. Thomas*: No. 2 CA-CR 2003-0074 (order of dismissal filed Mar. 20, 2003); No. 2 CA-CR 2003-0079 (order of dismissal filed Mar. 27, 2003); No. 2 CA-CR 2003-0152 (memorandum decision filed May 20, 2005); No. 2 CA-CR 2003-0154 (memorandum decision filed Sept. 1, 2004); No. 2 CA-CR 2003-0155 (memorandum decision filed Oct. 26, 2004); No. 2 CA-CR 2003-0211 (order of dismissal filed Oct. 30, 2003); No. 2 CA-CR 2003-0348 (order of dismissal filed Mar. 8, 2004); No. 2 CA-CR 2006-0262-PR (memorandum decision filed Jan. 31, 2007); No. 2 CA-CR 2006-0379-PR (memorandum decision filed Mar. 29, 2007); No. 2 CA-CR 2007-0215-PR (memorandum decision filed Dec. 6, 2007); No. 2 CA-CR 2008-0094-PR (memorandum decision filed Sept. 12, 2008); and the present petition for review, No. 2 CA-CR 2009-0375-PR.

¶3 We affirmed all of Thomas's convictions and sentences on appeal in 2004 and 2005. *See Thomas*, No. 2 CA-CR 2003-0152; *Thomas*, No. 2 CA-CR 2003-0155; *Thomas*, No. 2 CA-CR 2003-0154. In our four additional memorandum decisions issued in 2007 and 2008, we considered and addressed the numerous post-conviction claims he had asserted subsequently in each of his three cases. *See Thomas*, No. 2 CA-CR 2006-

0262-PR; *Thomas*, No. 2 CA-CR 2006-0379-PR; *Thomas*, No. 2 CA-CR 2007-0215-PR; *Thomas*, No. 2 CA-CR 2008-0094-PR.

¶4 In *Thomas*'s latest effort, from which the present petition for review arises, he filed under all three trial court cause numbers a pleading entitled "Writ of Coram Nobis (pursuant to Title 21 U.S.C. 852) / Motion to Vacate – 28 U.S.C.A. § 2255." The trial court treated the filing as a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and summarily denied relief. We approve and adopt the trial court's minute entry ruling, which states in part:

Petitioner argues that the Court erred in using his prior conviction in A-17852 to enhance his sentence in these matters. Petitioner is precluded from making this argument as it has been previously raised by Petitioner and ruled upon by this Court multiple times.¹ Petitioner first raised this argument prior to his sentencing in these matters and the Court denied [his] Motion to Preclude his prior conviction. [He] later filed a direct appeal and failed to raise this issue, precluding himself from later seeking relief based on this argument. Subsequently, Petitioner raised the argument about his prior conviction in his initial Petition for Post-Conviction Relief filed on August 7, 2006. The Court's Ruling, filed on February 2, 2007, denied relief. Petitioner appealed [sic] the Court's Ruling and Division Two of the Arizona Court of Appeals granted review but denied relief. Petitioner then filed a Writ of Coram Nobis on January 31, 2008, once again arguing that his conviction in A-17852 was not properly used to enhance his sentence[s] in these matters. The Court denied relief in its Ruling filed on February 13, 2008. Petitioner appealed [sic] the Court's Ruling and Division Two of the Arizona Court of Appeals granted review but denied relief. For the foregoing reasons, Petitioner is precluded from

¹*E.g.*, *Thomas*, No. 2 CA-CR 2003-0154, ¶ 10; *Thomas*, No. 2 CA-CR 2003-0155, ¶¶ 5-7; *Thomas*, No. 2 CA-CR 2007-0215-PR, ¶¶ 11-13.

making this argument; therefore, the Court need not reach the merits of [the] argument.

¶5 We will not interfere with a trial court's denial of post-conviction relief unless it has clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Thomas's sentencing claim is not only meritless but plainly precluded, and the trial court did not abuse its discretion in summarily dismissing this latest iteration of what is substantively the same claim Thomas has previously asserted numerous times.

¶6 Although we grant the petition for review, we deny relief.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge